

IRA

Insurance Regulatory Authority

MARKET CONDUCT GUIDELINES FOR INSURANCE INTERMEDIARIES

JUNE 2011

To All stakeholders

THE INSURANCE MARKET CONDUCT GUIDELINES FOR INSURANCE INTERMEDIARIES

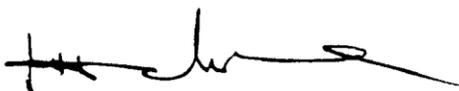
These Insurance Market Conduct Guidelines for intermediaries are issued pursuant to section 3A of the Insurance Act.

The guidelines set the minimum standards for proper conduct of intermediaries in performing their duties. The aim of these guidelines is to enhance best practices in the conduct of insurance business and to improve the image of the insurance industry.

The Authority recognizes the fact that the conduct of the insurance intermediary being the face of the insurer in the market is key to increased penetration of insurance business.

To enhance consumer protection and professionalism in conduct of insurance business, insurers are required to ensure that their agents or other intermediaries adhere to the set out guidelines.

To this end, the Insurance Regulatory Authority hereby issues the Insurance Market Conduct Guidelines for insurance intermediaries.



SAMMY M. MAKOVE
COMMISSIONER OF INSURANCE & CHIEF EXECUTIVE OFFICER

**THE INSURANCE ACT
(CAP 487)**

MARKET CONDUCT GUIDELINES FOR INSURANCE INTERMEDIARIES

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MARKET CONDUCT GUIDELINES FOR INSURANCE INTERMEDIARIES

1.0. Authorisation

IN EXERCISE of the powers conferred by sections 3A (a), (b) and (g) of the Insurance Act, the Insurance Regulatory Authority issues the Guidelines set out here below, for observance by insurance Intermediaries in Kenya (herein referred to as the Intermediaries) , in order to enhance internationally acceptable Insurance Market Conduct practices by the Insurance Intermediaries.

2.0 General Introduction

The Insurance Regulatory Authority has a mandate to develop, formulate and enforce supervisory standards for the conduct of insurance and reinsurance businesses in Kenya.

The Authority endeavors to have a mechanism for potential policyholders to have access to all material information before the conclusion of an insurance contract, to receive advice in a correct and meaningful manner in assessing their insurance requirements, to be informed about their rights and obligations for the duration of the contract, to be confident that they will receive correct and timely compensation in the event of a legitimate claim and in case of doubt to be able to receive supplementary advice from a neutral body. It is imperative to note that for a large number of market participants insurance products are difficult to understand and evaluate. They take the form of contractually agreed promises by the insurer to provide benefits or compensation (indemnity) to cover specified events or risks in exchange for certain obligations by the policyholder. As a result it is important for customers to have relevant, meaningful and understandable information, as far as possible in writing.

Insurance intermediaries play a vital role in enabling the potential policy holders to enter into insurance contracts. Under Part XV of the Insurance Act the insurance intermediaries include insurance and reinsurance brokers, medical insurance providers and insurance agents.

The Authority recognizes the role of the intermediaries in the conduct of the insurance business and appreciates that only by them observing the guidelines shall confidence and penetration in the insurance industry be boosted. The Authority further recognizes the fact that the intermediaries reflect the image of the insurance industry and their conduct is pivotal to the development of the industry. It is important for intermediaries continued relationship with the client even after the signing of the insurance contract or provision of the service. Policyholders have a right to deal with honest, trustworthy and knowledgeable intermediaries.

The Authority recognizes the right to information necessary for consumers to gain full benefit from goods and services as a consumer's fundamental right as enshrined in Article 46 of the Constitution of the Republic of Kenya.

2.1 Application

2.1.1. These guidelines shall apply to all insurance intermediaries authorized by law to carry

out insurance business as intermediaries under the insurance Act.

- 2.1.2. The insurer shall remain responsible where applicable for the acts of their agents since the legal responsibility rests on them. They must ensure compliance with these guidelines by all intermediaries carrying on insurance business as their agents.
- 2.1.3. All the intermediaries licensed under the Act by the Authority shall be required to adhere to these guidelines in their conduct of the insurance business.

2.2 Definitions

In these guidelines, reference to following words shall have the meaning assigned in this article:

- 2.2.1. **Address** is a point of contact and it includes the post office box, physical location, e-mail, fax and fixed/mobile telephone line.
- 2.2.2. **Insurance Intermediaries** refers to insurance agents, insurance brokers, and medical insurance providers assisting and representing an insurer in any of the following:
 - (a) Soliciting, negotiating, procuring or effectuating an insurance contract or its renewal.
 - (b) Disseminating information relating to coverage or rates.
 - (c) Forwarding an insurance application.
 - (d) Servicing a contract and delivering an insurance policy.
 - (e) Transacting a matter after effectuation of a contract
 - (f) Representing a matter after effectuation of a contract including claims handling.
 - (g) Claims handling.
 - (h) Representing or assisting an insurer or other person in any other manner in the transaction of an insurance contract
- 2.2.3 **Customer/Clients** means a policyholder and or potential policyholder.
- 2.2.4 **Intermediary service** means, any act performed by a person for or on behalf of a client or an insurer-
 - (a) the result of which is that a client may enter into any transaction in respect of an insurance contract with an insurer; or
 - (b) with a view to-
 - (i) buying, selling or otherwise dealing in, managing, administering, keeping in safe custody, maintaining or servicing an insurance contract entered into by a client from an insurer;
 - (ii) collecting or accounting for premiums or other moneys payable by the client to an insurer in respect of an insurance contract; or
 - (iii) handling of claims;

2.3 Objectives

- 2.3.1. These guidelines set out the market conduct and service standards expected of insurance intermediaries. They are meant to provide general guidance and are not

intended to replace or override any legislative provisions or written directives issued under the Insurance Act in respect of business conduct requirements specifically applicable to insurance intermediaries.

- 2.3.2. These guidelines should be read in conjunction with the provisions of the Act as well as notices, circulars and other guidelines that the Authority may issue from time to time.
- 2.3.3. These guidelines though not directly meant for insurers bind them as far as their legal liability as principal of any intermediary may be concerned. Insurers shall therefore play a leading role in the enforcement of these standards.

3.0 Principles for Conduct of Insurance Business

3.1 Client relationship

- 3.1.1. An intermediary shall observe high standards of integrity and fair dealing in the conduct of its business.
- 3.1.2. An intermediary has an obligation to avoid misleading and deceptive acts or misrepresentations to the client. It should not seek to exclude or restrict any duty or liability to a customer that it has under a legislative framework and/or accepted practices. Additionally, it should not seek to rely unreasonably on any provision of a contract seeking to exclude or restrict any such duty or liability.
- 3.1.3. An intermediary shall act with due skill, care, and diligence in the conduct of its business and in its dealings with customers.
- 3.1.4. An intermediary shall ensure that the client understands his/her relationship with the intermediary and on whose behalf the intermediary is acting.
- 3.1.5. In assessing the customers' needs, the intermediary shall:
 - (a) seek such information about the customer's circumstances and objectives as might reasonably be expected to be relevant in enabling the insurance intermediary to identify the customer's requirements. This shall include any facts that would affect the type of insurance proposed, such as any relevant existing insurance contract; and
 - (b) explain to the customer his duty to disclose all circumstances material to the insurance and the consequences of any failure to make such a disclosure, both before the insurance contract commences and throughout the duration of the contract; and take into account the information that the customer discloses.
- 3.1.6. Where an intermediary is responsible for providing advice or exercising discretion for its customers, it must seek from them such information about their circumstances and objectives as may be appropriate with regard to the services requested. Documentary evidence must be obtained in this respect.

- 3.1.7 All information in possession of an intermediary relating to a client shall be kept confidential. An intermediary shall adopt documented policy and procedures that are designed to ensure that information about the client is kept confidential and secure. Such policies and procedures shall include;
- (a) Employees' undertakings to maintain confidentiality as part of their contracts of employment.
 - (b) Policies that determine which employees may have access to which information.
 - (c) Procedures that effectively restrict access to confidential information to such employees.
 - (d) Systems that are designed to safeguard the integrity of any electronic record or transaction recording system.

3.2 Sales Conduct

- 3.2.1 An intermediary must take reasonable steps to ensure that, if in the course of insurance mediation activities it makes any personal recommendation to a customer to buy an insurance product, the personal recommendation is suitable for the customer's needs at the time the personal recommendation is made.
- 3.2.2 Where the intermediary makes personal recommendation to the customer that does not meet all of the customer's needs as requested, the intermediary shall identify to the customer, at the point at which the personal recommendation is made, the needs that are not met by that insurance product.
- 3.2.3 The personal recommendation to be given by the intermediary should be based on the fact given by the customers and on the customer's existing insurance cover. If the intermediary is aware that the customer's existing insurance cover is likely to significantly affect the suitability of any personal recommendation that the insurance intermediary might make, the intermediary must either:
- (a) not make a personal recommendation until details of the insurance cover are made available; or
 - (b) If it makes a personal recommendation, make clear to the customer that this may not be suitable because the intermediary has not taken into account full details of the customer's existing insurance cover.
- 3.2.4 In assessing whether an insurance product is suitable to meet a customer's needs, an insurance intermediary must take into account at least the following matters:
- (a) whether the level of cover is sufficient for the risks that the customer wishes to insure;
 - (b) the cost of the product, where this is relevant to the customer's needs; and
 - (c) the relevance of any exclusions, excess, limitations or conditions in the contract.

- 3.2.5 An intermediary shall explain when and how the premium is payable and how such premium is to be collected, where another party is financing all or part of the premium, full details shall be given to the client including any obligations that the client may owe to that party; and explain the process to follow in the event of a loss.
- 3.2.6 An intermediary while making a sale to a client shall ensure that:
- (a) The proposal is completed by the customer personally;
 - (b) The customer must signs all pages of the proposal;

3.3 Disclosure of information to Customers

- 3.3.1 An intermediary shall provide clients with adequate information about their business including their business address and telephone number.
- 3.3.2 When providing advice to, or arranging contracts of insurance for the client, an intermediary shall make full and adequate disclosure of all facts necessary for their clients to make an informed decision.
- 3.3.3 An intermediary shall explain all the essential provisions contained in the contract of insurance which they are recommending so as to ensure as far as possible that their client understands what insurance cover they are buying.
- 3.3.4 An intermediary shall draw their client's attention to any conditions or any exclusions and any warranty applying to the contract of insurance.
- 3.3.5 An intermediary shall, disclose the amount of commission and, or fee paid by the insurer under any relevant contract of insurance the client is buying.
- 3.3.6 The insurance intermediary shall give to the customer the following information before the conclusion of the insurance contract;
- (a) name of the insurer undertaking the risk;
 - (b) type of insurance ;
 - (c) significant features and benefits of the policy;
 - (d) the premium to be paid by the customer for the insurance product (or, if an exact price cannot be indicated, the basis for calculation of the price enabling the customer to verify it);
 - (e) notice of the possibility that other taxes or costs and, or benefit may exist in respect of the insurance contract;
 - (f) the existence of the right of cancellation and, where applicable, the duration of the cancellation period and the conditions for exercising the right to cancel, including information on penalties that may arise thereon;

- (g) a telephone number or address through which a claim may be notified; and
- (h) that any other information as may be required is available on request.

3.3.7 The intermediaries shall disclose to their customers about any cancellation rights which shall include the following information;

- (a) the existence of a right to cancel,
- (b) the duration of the cancellation period, in accordance with the conditions for exercising the right to cancel, including information on the amount which the customer may be refunded if any,
- (c) the consequences of cancelling the policy within a cooling off period; and
- (d) how the right to cancel may be exercised, including the address to which the notification of cancellation should be sent.

3.4 Explanation of Information in the Contract

3.4.1 Every intermediary shall;

- (a) provide the list of insurer(s) participating under the insurance contract and advise any subsequent changes thereafter,
- (b) explain all the essential provisions of the cover afforded by the policy recommended by the intermediary so that, as far as possible, the prospective client understands what is being purchased,
- (c) quote terms exactly as provided by insurer,
- (d) draw attention to and explain any warranties, conditions and exclusions under the policy and explain how the contract may be cancelled,
- (e) provide the client with prompt written confirmation that insurance has been effected. If the final policy wording is not included with this confirmation, the same shall be forwarded within the time prescribed by the Authority,
- (f) notify changes to the terms and conditions of any insurance contract and give reasonable notice before any changes take effect; provided that no change shall be valid unless consented to by all parties,
- (g) advise its clients of any insurance proposed on their behalf which will be effected with an insurer outside Kenya, where permitted, and of the possible risks involved and;
- (h) at the point of sale shall warn their clients on the consequences of surrendering the policy in its early years.

3.5 Renewal of Insurance Policy

3.5.1 Every intermediary shall;

- (a) Ensure that its client is informed in writing of the expiry date of the insurance policy not less than one month before the expiry date. Provided where the services of the intermediary are terminated by the insurer in a manner that it will not be possible for such intermediary to give the information of the expiry of the policy, the responsibility to provide such information shall lie with the insurer.
- (b) Ensure that the client receives the insurer's renewal notice in time before the expiry date but not later than one month before the expiry date.
- (c) Ensure that renewal notices contain a notification regarding the duty of disclosure including the necessity to advise changes affecting the policy, which have occurred since the policy inception or the last renewal date.
- (d) draw attention and explain, the contents of the renewal notices as issued by the insurer.

3.6 Claims Handling

3.6.1 Every intermediary shall;

- (a) explain to its clients their obligation to notify claims promptly, to disclose circumstances surrounding the loss and advise subsequent developments as soon as possible. The intermediary shall inform the clients of the claims supporting documents that shall be required by the insurer at the time of making the claim.
- (b) request the client to make true, fair and complete disclosure where it believes that the client has not done so and explain the consequences of such non disclosure.
- (c) give prompt advice to the client of any requirements concerning the claim;
- (d) forward any information received from the client regarding a claim or an incident that may give rise to a claim without delay, and in any event within seven days.
- (e) advise the client without delay of the insurer's decision; and in case of insurance brokers and medical insurance providers, give all reasonable assistance to the client in pursuing the claim.
- (f) where there is any dispute arising out of the payment of the claim, advise the client on any mechanisms available to resolve the dispute in accordance with the terms of the policy.

3.6.2 The intermediary shall provide the following information to their clients about the claims handling procedure;

- (a) the address, telephone number or other point of initial contact for notifying a claim; and
- (b) the information the policy holder must provide to the insurer when notifying a claim.

3.7 Receipt of Complaint

- 3.7.1 Every intermediary shall develop a complaint handling mechanism and communicate the same to every proposer or policyholder. Such mechanism shall include provisions for;
- (a) handling complaints in a fair, timely and appropriate manner;
 - (b) addressing the complaints promptly;
 - (c) acknowledgement of complaints;

 - (d) maintenance of complaints register containing the details of complaints received and how they have been dealt with;

3.8 Documentation

- 3.8.1 The intermediary shall ensure that the documents issued under the insurance contract comply with both statutory and regulatory requirements
- 3.8.2 The intermediary shall ensure that the policy document is sent to the client as soon as the proposal of the client is accepted by the insurer, provided that;
- (a) the policy document shall be sent not later than fourteen days from the date of receipt from the insurer.

 - (b) the Intermediary shall take an acknowledgement note signed and dated from the client acknowledging the receipt. The date of acknowledgement shall be the first date of the cooling off period or cancellation notice.
- 3.8.3 The intermediary shall on delivery of the policy document, make available a written advice that the policy document shall be read carefully and retained by the client.
- 3.8.4 The Intermediary shall not withhold documentation from its clients without their consent, unless adequate and justifiable reasons are disclosed in writing and without delay to the client. Where documentation is withheld, the client must still receive a copy of the insurance contract;

3.9 Advertisement and Statements

- 3.9.1 Every intermediary shall conform to the provisions of part XVII of the Insurance Act on Advertisement and Statements.
- 3.9.2 Every intermediary shall take responsible steps to ensure that any advertising and promotional material that it gives or sends to the general public is presented fairly and clearly and is not misleading.
- 3.9.3 Every intermediary shall observe the following requirements in respect of advertisement of insurance products. That the advertisement;
- (a) Shall not contain a statement, promise or forecast which is untrue or misleading;

- (b) is not designed in such a way as to distort or conceal any relevant subject material;
- (c) is designed in such a way that all descriptions, assertions and comparisons which relate to matters of objectivity shall be capable of substantiation.
- (d) prominently disclose all the salient features of the product advertised;
- (e) disclose all procedures necessary for pursuit of any extra benefit contained in the contract;
- (f) does not contain a statement relating to past performance unless:
 - i. the basis on which past performance is measured and is clearly stated and the presentation is fair;
 - ii. it is accompanied by a warning that past performance is not necessarily a guide to future performance; and
 - iii. the past performance is relevant to the services offered by the provider.
- (g) does not contain information likely, in light of the accepted standards of decency cause offence or disharmony;
- (h) is so framed as not to abuse the trust of clients or exploit their lack of knowledge.

3.10 Remuneration

The basis of remunerating the intermediary shall be by means of a commission as provided in the Insurance Act or as may be specified by the Authority from time to time.

3.11 Training

- 3.11.1 An intermediary shall be required to possess relevant knowledge and skill in insurance as may be prescribed by the Authority.
- 3.11.2 An Intermediary shall act with competence and strive to maintain the necessary knowledge and expertise necessary for the proper conduct of their business activities.
- 3.11.3 Individual insurance agents and or principal officers of corporate agent shall be required to pass or to be exempted from Certificate of Proficiency (COP) examination for agents or any other qualification as the Authority may determine from time to time.
- 3.11.4 The Principal Officer of an insurance brokerage firm shall be required to be a holder of such a professional qualification in insurance and member of an insurance professional body recognized by the Authority.
- 3.11.5 Insurance brokers or corporate agents shall ensure that the staff employed or so appointed are suitably qualified and competent, and the person possesses the relevant professional training or experience to act in the capacity so employed.

3.12 Conflict of Interest

- 3.12.1 An intermediary shall avoid any conflict of interest arising, and where one arises disclose and decline to act.
- 3.12.2 An intermediary shall not place its interest above those of its customers.

3.13 Display of Notice

Every intermediary shall display in every office where it is carries on business and to which the public have access a notice to the effect that a copy of these guidelines is available upon request.

4.0 Enforcement of the Guidelines

- 4.1 The Insurance Regulatory Authority shall enforce these guidelines against the insurance intermediary.
- 4.2 Every intermediary shall abide by the provisions of the Insurance Act, rules and regulations made thereunder which may be applicable and relevant to the activities carried on by them as insurance intermediaries.
- 4.3 The Authority shall exercise any of the following powers to any person who contravenes these guidelines;
- (a) Direct to comply within a specified period;
 - (b) Direct that the person meets the loss occasioned by such contravention;
 - (c) Suspend the license for a specified period;
 - (d) Decline to renew the annual license;
 - (e) Cancel the license ;
 - (f) Any other measure as prescribed in the Insurance Act.

5.0. Effective Date

1st July 2011

6.0 Enquiry

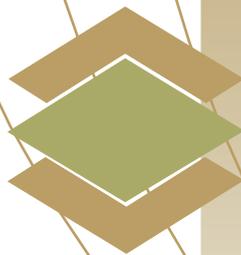
Enquiries on any aspect of these guidelines shall be referred to;

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